SB
206

HFIN
FILE

HOUSE COMMITTEE REPC T

(11)
Date Referred to Committee: May 6, 2006

FURTHER REFERRALS:

Date of Committee Action: 5/7/06

The FINANCE Committee considered:

CSSB 206(FIN)

CS FOR SENATE BILL NO. 206(FIN)

DETENTION /I.D. OF PERSONS;CONTEMPT OF CT

"An Act relating to contempt of court and to temporary detention and identification of persons."

Recommends it be replaced with [✓] HCS *or* [ ] CS for CSSB 206 (Jud)
For Senate Bills with new title: [ ] *Technical Title* [ ] *New Title: HCR*_______ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to ___________Committee
[ ] Letter of Intent___________Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
ADM	5			✓
COR	6			✓
LAW	7			✓
ADM	8			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Mike Hawker	Hawker	✓			
[illegible]	Holm	✓			
Bruce Weyhrauch	Weyhrauch			x	
[illegible]	FOSTER	x			
Beth Kerttula	Kerttula			✓	
Bill Stoltze	Stoltze				
Chair: K. Meyer	Meyer	✓			
Chair: Mike Chenault	Chenault	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 8
Bill Version: CSSB 206(FIN)
(S) Publish Date: 3/24/06

Revision Date/Time (Note if correction): 3/17/06 / 8:35 a.m.
Dept. Affected: Administration
Title: An Act relating to material witnesses
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Sen. Bunde
Requester: (S)FIN
Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: [ ]

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill permits a material witness to be detained and fingerprinted under certain exigent circumstances. It also amends the penalty statute for contempt.

This bill is not expected to have an impact on the Public Defender Agency's fiscal operations.

Prepared by: Quinlan Steiner, Director — Phone (907) 334-4414
Division: Public Defender Agency — Date/Time 3/17/2006 8:35 a.m.
Approved by: Mike Tibbles, Deputy Commissioner — Date 3/17/2006
Agency: Administration

(Revised 9/1/05 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: CSSB 206(FIN)
(S) Publish Date: 3/24/06

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title: "An Act relating to contempt of court and to temporary detention and identification of persons."
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Senator Bunde
Requester: Senate Finance
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: [ ]

POSITIONS

POSITIONS	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill allows for stiffer penalties for contempt of court when it arises from failure to honor a subpoena or refusal to be sworn or answer as a witness under was in connection with a court proceeding relating to a felony crime or an appearance before the grand jury. It also creates a new Article in the Criminal Code under Chapter 50 (Witnesses). The new article allows a peace officer to temporarily detain a person who witnessed or may have witnessed a crime or the detention is necessary to identify the person, obtain an account of the crime or protect the person from imminent harm or for other exigent circumstances. It allows the peace officer to subject the detainee to certain procedures such as photographs or fingerprints and makes it a class B misdemeanor if the person refuses or resists the taking of photographs or fingerprints. Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetee, Director
Phone: 465-3673
Division: Administrative Services Division
Date/Time: 3/17/06 3:04 PM
Approved by: Kathryn Daughhetee for David Marquez, Attorney General
Date: 3/17/2006
Agency: Department of Law

(Revised 8/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: CSSB 206(FIN)
(S) Publish Date: 3/24/06

Revision Date/Time (Note if correction):
Title: "An act relating to detention of material witnesses"
Sponsor: Senator Bunde
Requester: Senate Judiciary

Dept. Affected: Corrections
RDU: Institutional Facilities
Component: Institution Director's Office
Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal: [ ]

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: *(Attach a separate page if necessary)*

The department anticipates an extremely small number of potential cases each year that may be impacted by the language contained in the legislation. Due to the small number of potential cases and the fact that a sentence, if imposed, may not exceed 10 days of imprisonment, passage of the legislation should not have a significant fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director — Phone (907) 465-3339
Division: Administrative Services — Date/Time 3/19/06 3:19 PM

Approved by: Portia C.K. Parker, Deputy Commissioner — Date 3/19/2006
Agency: Department of Corrections

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSSB 206(FIN)
(S) Publish Date: 3/24/06

Revision Date/Time (Note if Revision): 3/19/06 11:15 a.m.
Title: An act relating to material witnesses; ...
Sponsor: Senator Bunde
Requester: (S) Finance

Dept. Affected: Administration
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Component No. 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill permits a material witness to be detained and fingerprinted under certain exigent circumstances. It also amends the penalty statute for contempt.

This bill is not expected to have an fiscal impact on the Office of Public Advocacy.

Prepared by: Joshua P. Fink, Director — Phone (907) 269-3500
Division: Office of Public Advocacy — Date/Time 3/19/06 11:15 a.m.
Approved by: Mike Tibbles, Deputy Commissioner — Date 3/20/2006
Agency: Administration

adopted 5/7

24-LS1197\N
Luckhaupt
5/6/06

HOUSE CS FOR CS FOR SENATE BILL NO. 206( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR BUNDE

REPRESENTATIVE Anderson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to contempt of court and to temporary detention and identification of
2 persons."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 09.50.020(a) is amended to read:
5 (a) A person who is guilty of contempt
6 (1) may be punished [IS PUNISHABLE] by a fine of not more than
7 $300 or by imprisonment for not more than six months for a contempt under
8 (A) AS 09.50.010(1) or (2);
9 (B) AS 09.50.010(3) - (12) if [, HOWEVER, WHEN THE
10 CONTEMPT IS ONE MENTIONED IN AS 09.50.010(3) - (12), OR IN AN
11 ACTION BEFORE A MAGISTRATE, THE PERSON IS PUNISHABLE BY
12 A FINE OF NOT MORE THAN $100 UNLESS] it appears that a right or
13 remedy of a party to an action or proceeding was defeated or prejudiced by the
14 contempt; or

(C) AS 09.50.010(5) or 09.50.010(10) if the conduct involves the failure to honor a subpoena or refusal to be sworn or answer as a witness in connection with a civil or criminal court proceeding or an appearance before the grand jury;

(2) may be punished by a fine of not more than $100 for a contempt under AS 09.50.010(3) - (12), except as otherwise provided in (1)(B) or (1)(C) of this subsection [, IN WHICH CASE THE PENALTY SHALL BE AS PRESCRIBED FOR CONTEMPTS DESCRIBED IN AS 09.50.010(1) AND (2)].

*** Sec. 2.** AS 12.50 is amended by adding a new section to read:

Article 3. Temporary Detention and Identification of Persons.

Sec. 12.50.201. Temporary detention and identification of persons. (a) A peace officer may temporarily detain a person under circumstances that give the officer reasonable suspicion that

(1) the person

(A) witnessed the commission of a crime against a person under AS 11.41 or a felony property crime under AS 11.46; or

(B) was at the scene, or in the vicinity, during the commission of a crime against a person under AS 11.41 or a felony property crime under AS 11.46;

(2) the person has information of material aid in the investigation of that crime; and

(3) the temporary detention of the person for no longer than is reasonably necessary to obtain or verify the identification of the person, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.

(b) A peace officer who temporarily detains a person under (a) of this section may

(1) detain the person only as long as reasonably necessary to accomplish the purposes of that subsection;

(2) take one or more photographs of the person, if photographs can be taken without unreasonably delaying the person or removing the person from the

1 vicinity;

2 (3) serve a subpoena on the person to appear before the grand jury
3 where the crime was committed, if the person fails to provide valid government-issued
4 photographic identification; and

5 (4) take the person's fingerprint impressions if

6 (A) the person is detained in connection with the investigation
7 of a murder, attempted murder, or misconduct involving weapons in the first
8 degree under AS 11.61.190; and

9 (B) fingerprint impressions can be taken without unreasonably
10 delaying the person or removing the person from the vicinity.

11 (c) A peace officer electing to serve a subpoena under (b) of this section may
12 not require the person to sign the subpoena or another document. The officer or the
13 subpoena must advise the person that failure to honor the subpoena is punishable as
14 criminal contempt of court under AS 09.50.010. A person receiving a subpoena to
15 testify under (b) of this section may request the district attorney to withdraw the
16 subpoena if, before the grand jury proceeding for which the person has been served a
17 subpoena to appear, the person provides the peace officer who served the subpoena
18 with valid government-issued photographic identification.

19 (d) Photographs or fingerprints taken under (b) of this section

20 (1) may be used for identification purposes only, and not for criminal
21 investigative purposes unless it is determined that the person is suspected of
22 committing the crime under investigation; and

23 (2) must be destroyed upon the earlier of the following occurrences
24 unless it is determined that the person is suspected of committing the crime under
25 investigation:

26 (A) the person has testified in a grand jury or court proceeding
27 in connection with the matter under investigation; or

28 (B) completion of the prosecution of the crime being
29 investigated.

30 (e) A person who refuses or resists the taking of photographs or fingerprints
31 under this section commits a class B misdemeanor, punishable as provided in

1 AS 12.55, except that a sentence of imprisonment, if imposed, may not exceed 10
2 days.

New Text Underlined [DELETED TEXT BRACKETED]

Alaska State Legislature
Senator Con Bunde
Senate District P
Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

Sponsor Statement
SB 206

"An Act relating to contempt of court and to temporary detention and identification of persons."

Written in Alaska's constitution is an acknowledgement of an individual's freedom and an individual's corresponding obligation to our state. Striking a balance between the needs of society to prosecute crime, the rights of a defendant to witnesses on their behalf and the right of an individual to be free from unreasonable arrest is the central issue in Senate Bill 206 Detention of Material Witnesses.

A material witness is a witness whose testimony is crucial to either the defense or prosecution. SB 206 adds a section to AS 12.50 allowing peace officers to temporarily detain material witnesses at the scene of a crime. SB 206 outlines that the detention is allowed only when it is necessary to obtain the identification of the witness, to obtain an account of the crime, to protect a crime victim from imminent harm, or for other exigent circumstances.

SB 206 allows a police officer who has detained a person under these circumstances to photograph the person; serve a subpoena on the person to appear before the grand jury if the person fails to provide valid government-issued identification and; take the person's fingerprints if the person is detained in connection with the investigation of a murder, attempted murder or misconduct involving weapons in the first degree under AS 11.61.190.

Giving peace officers the ability to gain the identification of material witnesses at the scene of a crime protects both the needs of society and the rights of the individual. Material witnesses can be the deciding factor in bringing indictments and prosecuting crime. Alternatively, material witnesses may also provide crucial testimony to defendants' arguments. SB 206 balances the interests of individuals' freedom with the need to collect information at the scene of a crime.

Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Con Bunde
Current Version: CSSB 206 (FIN)
Contact: Lauren Rice, 465-3881

Fact Sheet for: Senate Bill 206

Short Title: DETENTION OF MATERIAL WITNESSES

Summary:

- Increases the penalty for contempt of court for failure to honor a subpoena or refusal to answer as a witness in connection with a felony crime or appearance before the grand jury.
- Adds a section to AS 12.50 allowing a peace officer to temporarily detain a person under circumstances that give the officer reasonable suspicion that:
  - the person witnessed a crime or was in the vicinity of a crime such as homicide or manslaughter;
  - the person may have information of material aid in the investigation of that crime, and;
  - the temporary detention is reasonably necessary to obtain or verify the identification of the person, to obtain an account of the crime, to protect a crime victime from imminent harm, or for other exigent circumstances.
- Allows a police officer who has detained a person under these circumstances to:
  - photograph the person;
  - serve a subpoena on the person to appear before the grand jury if the person fails to provide valid government-issued identification;
  - take the person's fingerprints if the person is detained in connection with the investigation of a murder, attempted murder or misconduct involving weapons in the first degree under AS 11.61.190.
- Prohibits the peace officer from requiring the person to sign a subpoena issued under this section, and requires the peace officer to advise the person that failure to honor the subpoena is punishable as criminal contempt of court.
- Allows a person receiving a subpoena to request the district attorney to withdraw the subpoena if the person provides a valid government-issued photographic identification prior to the grand jury proceeding.
- Makes it a class B misdemeanor to refuse or resist the taking of photos or fingerprints, and outlines procedures for retaining or destroying them.

Benefits:

- Balances the need to protect individual freedom with the ability to prosecute crime and to provide defendants with witnesses on their behalf.

Background:

- A material witness is crucial to either the defense or prosecution. Unfortunately, material witnesses often refuse to cooperate with law enforcement officials, significantly impeding the ability to bring indictments or prosecute crime. SB 206 protects material witnesses from unreasonable arrests or confinement and helps ensure the availability of crucial testimony.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

.itation/Title
RCRP Rule 5, RULE 5. PROCEEDINGS BEFORE THE JUDGE OR MAGISTRATE

Rules of Criminal Procedure, Rule 5

WEST'S ALASKA COURT RULES
RULES OF CRIMINAL PROCEDURE
PART II. PRELIMINARY PROCEEDINGS

Current with amendments received through 8/15/2005

RULE 5. PROCEEDINGS BEFORE THE JUDGE OR MAGISTRATE

(a) Appearance Before Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. Unnecessary delay within the meaning of this paragraph (a) is defined as a period not to exceed twenty-four hours after arrest, including Sundays and holidays.

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance,

then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within twenty-four hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for the counsel to be appointed, if appropriate.

(3) The responsibility for ensuring that the arrested person is taken before a judge or magistrate as specified in subsections (1) and (2) of this section (a) shall be borne equally by

(i) municipal police officers and municipal jail personnel, and by

(ii) state troopers, state jail personnel, and all other peace officers.

No distinction shall be drawn between cases in which arrest was made pursuant to a warrant and cases in which arrest was made without a warrant.

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*342 (4) Whenever the person arrested is taken for examination before a judge or magistrate other than the one who issued the warrant, the complaint and any other statement or deposition on which the warrant was granted must be furnished to the defendant and must be communicated to the judge or magistrate before whom the person arrested appears.

(5) Whenever a person arrested without a warrant is brought before a judge or magistrate, a complaint shall be filed forthwith.

(6) Judges and magistrates shall be available at all times to receive bail, and each judge and magistrate individually shall have authority to delegate this duty to the person admitting the defendant to jail, or to such other person as shall in the determination of a judge or magistrate be qualified for this purpose.

(b) Rights of Prisoner to Communicate with Attorney or Other Person. Immediately after arrest, the prisoner shall have the right forthwith to telephone or otherwise to communicate with both an attorney and any relative or friend. Any attorney at law entitled to practice in the courts of Alaska, at the request of either the prisoner or any relative or friend of the prisoner, shall have the right forthwith to visit the prisoner in private. This paragraph does not provide a prisoner with the right to initiate communication or attempt to initiate communication under circumstances proscribed under AS 11.56.755.

(c) Statement by Judge or Magistrate--Right to Counsel--Bail. The judge or magistrate

(1) shall inform the defendant of the complaint and of any affidavit filed therewith, and

(2) shall require that a copy of the complaint and of any affidavit filed therewith be delivered to the defendant if this has not already been done, and

(3) shall inform the defendant

(i) of the right to retain counsel, and

(ii) of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and

(iii) of the right to have a preliminary examination, and

(4) shall inform the defendant that the defendant is not required to make a statement and that any statement may be used against the defendant. The judge or magistrate shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by law and by these rules.

(d) Initial Determination of Probable Cause.

*343 (1) If the defendant was arrested without a warrant, the judicial officer at the first appearance shall determine whether the arrest was made with probable cause to believe that an offense had been committed and that the defendant had committed it. This determination shall be made from the complaint, from an affidavit or affidavits filed with the complaint, or from an oral statement under oath of the arresting officer or other person which is recorded by the judicial officer. The determination shall be noted in the file.

(2) If the defendant was arrested on a warrant for a failure to appear at a prior proceeding, the court shall determine from the file whether the defendant's initial arrest was pursuant to a warrant and, if not, whether at a prior proceeding the court made an initial determination of probable cause as required by subparagraph (d)(1). If there has been no judicial determination of probable cause, the court shall proceed as under subparagraph (d)(1).

(3) If probable cause is not shown, the judicial officer shall discharge the defendant.

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(e) Felonies.

(1) If the charge against the defendant is a felony, the defendant shall not be called upon to plead.

(2) The judicial officer shall inform the defendant of the right to a preliminary examination. A defendant is entitled to a preliminary examination if the defendant is charged with a felony for which the defendant has not been indicted, unless

(A) the defendant waives the preliminary examination, or

(B) an information has been filed against the defendant with the defendant's consent in the superior court.

(3) If the defendant after having had the opportunity to consult with counsel waives preliminary examination, the judicial officer shall forthwith hold the defendant to answer in the superior court.

(4) If the defendant does not waive preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time, but in no event later than

(A) 10 days following the initial appearance, if the defendant is in custody, or

(B) 20 days following the initial appearance, if the defendant is not in custody.

With the consent of the defendant and upon a showing of good cause, taking into account the public interest in prompt disposition of criminal cases, the judicial officer may extend the time limits specified in this subsection one or more times. In the absence of consent by the defendant, the judicial officer may extend these time limits only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interest of justice.

*344 (f) Misdemeanors.

(1) The judicial officer shall ask the defendant to enter a plea pursuant to Criminal Rule 11.

(2) If the defendant pleads not guilty, the court shall fix a date for trial at such time as will afford the defendant a reasonable opportunity to prepare.

[Amended effective July 15, 1994; July 15, 1995; by Laws 1998, c. 86, § 17; June 13, 1998.]

Note

Note to SCO 1339: Criminal Rule 5(b) was amended by § 17 ch. 86 SLA 1998 to make it clear that the rule does not give a prisoner the right to contact a victim or witness in violation of AS 11.56.755. Section 1 of this order is adopted for the sole reason that the legislature has mandated the amendment.

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Citation/Title
AK ST Sec. 12.30.050, Release of material witnesses

*5105 Alaska Stat. § 12.30.050

WEST'S ALASKA STATUTES
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 30. BAIL

Current through the 2005 First Regular Session and First Special Session of the 24th Alaska Legislature

§ 12.30.050. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in a criminal proceeding, and it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer shall impose conditions of release under AS 12.30.020. A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition. Release may be delayed for a reasonable period of time for the deposition of the witness to be taken.

Search this disc for cases citing this section.

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Citation/Title
AK ST Sec. 12.30.020, Release before trial

***5090 Alaska Stat. § 12.30.020**

WEST'S ALASKA STATUTES
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 30. BAIL

Current through the 2005 Fir[illegible] Regular Session and First Special Session of the 24th Alaska Legislature

§ 12.30.020. Release before trial

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to the alleged victim, other persons, or the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing as a custodian to supervise the person; the court shall, personally and in writing, inform the custodian about the duties required of a custodian, and that failure to report immediately in accordance with the terms of the order that the person released has violated a condition of release may result in the custodian's being held criminally liable under AS 11.56.758;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the person to return to custody after daylight hours on designated conditions;

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

*5091 (5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(6) require the execution of a performance bond in a specified amount and the deposit in the registry of the court, in cash or other security; the performance bond must be imposed and enforced separately from any appearance bond, and the deposit to be returned upon the performance of the condition of release; or

(7) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall [illegible] account

(1) the nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) the weight of the evidence against the person;

(3) the person's family ties;

(4) the person's employment;

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(5) the person's financial resources;

(6) the person's character and mental condition;

(7) the length of the person's residence in the community;

(8) the person's record of convictions;

(9) the person's record of appearance at court proceedings;

(10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings; and

(11) threats the person has made, and the danger the person poses, to the alleged victim.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties that may be imposed for a violation of the conditions of release and advise the person that a warrant for the person's arrest will be issued immediately upon a violation or that the person may be arrested without a warrant for a violation of conditions of release as set out in AS 12.25.030(b).

(f) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

*5092 (g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend the order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law.

(i) The court shall issue written or oral findings to demonstrate why conditions provided under (b)(1) of this section needed to be imposed.

(j) If a person remains in custody after review of conditions by a judicial officer under (f) of this section, a subsequent review of conditions may be held at the request of the person. Unless the prosecuting authority stipulates otherwise, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that information not considered at the previous review will be presented and includes a description of the new information;

(2) the prosecuting authority has at least 48 hours' notice before the time set for the review requested under this subsection; and

(3) at least 48 hours have elapsed between the previous review and the time set for the review requested under this subsection.

Amended by Laws 1994, c. 115, § 4, imd. eff. June 18, 1994; Laws 1997, c. 63, §§ 10 to 12, eff. July 1, 1997; Laws 2000, c. 124, § 4, eff. September 4, 2000; Laws 2004, c. 124, §§ 18, 19, eff. July 1, 2004; Laws 2005, c. 65, § 1, eff. July 14, 2005

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HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Laws 2004, c. 124, § 32(c) provides:

"(c) Sections 16, 18, and 19 of this Act apply to custodians who fail to report on or after July 1, 2004, for persons released for offenses committed before, on, or after July 1, 2004."

Laws 2000, c. 124, § 7 provides:

"Applicability. (a) Sections 1--3 and 5 of this Act apply to offenses committed on or after September 4, 2000. However, the underlying offense for which a person is on release before trial, sentence, or service of sentence may occur before, on, or after the September 4, 2000.

"(b) Section 4 of this Act applies to custodians appointed and performance bonds posted on or after September 4, 2000. However, offenses that give rise to the appointment of a custodian or the posting of the performance bond may occur before, on, or after September 4, 2000.

*5093 "(c) Section 6 of this Act applies to actions occurring before, on, or after September 4, 2000."

Laws 1997, c. 63, § 27(a) provides:

"Except as provided in (c) and (d) of this section, this Act applies to a criminal or juvenile hearing and proceedings held on or after the effective date of the relevant section of this Act, regardless of whether the criminal offense or delinquent act occurred before, on, or after the effective date of the relevant section of this Act."

Search this disc for cases citing this section.

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Citation/Title
AK ST Sec. 12.50.010, Witness subpoenaed in this state to testify in another state

*5217 Alaska Stat. § 12.50.010

WEST'S ALASKA STATUTES
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 50. WITNESSES
ARTICLE 1. UNIFORM ACT TO SECURE ATTENDANCE IN CRIMINAL PROCEEDINGS

Current through the 2005 First Regular Session and First Special Session of the 24th Alaska Legislature

§ 12.50.010. Witness subpoenaed in this state to testify in another state

(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within the state to attend and testify in this state certifies under the seal of the court that there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence, that a person within this state is a material witness in that prosecution or grand jury investigation, and that the presence of that person will be required for a specified number of days, then, upon presentation of the certificate to a judge of a court of record in the judicial district in which the person is, the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the subpoena. In any such hearing the certificate shall be prima facie evidence of all of the facts stated therein.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be immediately brought before the judge for said hearing; and if the judge at the hearing is satisfied of the desirability of the custody and delivery, for which determination the certificate shall be prima facie proof of this desirability the judge may, in lieu of issuing subpoena, order that the witness be immediately taken into custody and delivered to an officer of the requesting state.

*5218 (d) If the witness who is subpoenaed as provided in this section, after being paid or tendered by a properly authorized person a sum equivalent to the cost of air fare round trip passage on a certificated carrier or such prepaid passage and reasonable incidental travel allowance for going to and from airports plus $20 per day for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of a witness who disobeys a subpoena issued from a court of record in this state.

Search this disc for cases citing this section.

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Appendices

Citations to State Material Witness Statutes.[65]

Alabama: ALA.CODE §§15-11-13 to 15-11-14;
Alaska: ALASKA STAT. §12.30.050;
Arizona: ARIZ.REV.STAT.ANN. §13-4081 to 13-4084;
Arkansas: ARK.CODE ANN. §§16-85-508, 16-85-208, 16-85-210, 16-85-211;
California: CAL. PENAL CODE §§878-883;
Colorado: COLO.R.CRIM.P. 15(b),
Connecticut: CONN.GEN.STAT.ANN. §54-82j, 54-82k;
Delaware: DEL.CODE ANN. tit.11 §5911;
Florida: FLA.STAT.ANN.§§902.15, 902.17;
Georgia: GA.CODE §§17-7-26, 17-7-27;
Hawaii: HAWAII REV.STAT. §§835-1 to 835-8;
Idaho: IDAHO CODE §§19-820 to 19-824;
Illinois: ILL.COMP. LAWS ANN. ch.725 §5/109-3;
Iowa: IOWA CODE ANN. §§804.11, 804.23;
Kansas: KAN.STAT.ANN. §22-2805;
Kentucky: Ky.R.Crim.P. 7.06;
Louisiana: LA.REV.STAT.ANN. §15:257;
Maine: ME.REV.STAT.ANN. tit.15 §1104;
Maryland: Md.Cts. & Jud. Pro. Code §9-203, Md.Rules, R4-267;
Massachusetts: MASS.GEN.LAWS ANN. ch.276 §§45-52;
Michigan: MICH.COMP.LAWS ANN. §§765.29, 765.30, 767.35;
Minnesota: MINN.STAT.ANN.§§629.54, 629.55;
Mississippi: MISS.CODE ANN. §99-15-7;
Missouri: MO.ANN.STAT. §544.420;
Montana: MONT.CODE ANN. §46-11-601;
Nebraska: NEB.REV.STAT. §29-507 to 29-508.02;
Nevada: NEV.REV.STAT. §178.494;
New Hampshire: N.H.REV.STAT.ANN. §597:6-d;
New Jersey: N.J.STAT.ANN. §2C:104-1 to 104-9;
New Mexico: N.MEX.STAT.ANN. §31-3-7;
New York: N.Y. CRIMINAL PROCEDURE LAW §§620.10 to 620.80;
North Carolina: N.C.GEN.STAT. §15A-803;
North Dakota: N.D.R.Crim.P. 46;
Ohio: OHIO REV.CODE ANN. §§2937.16 to 2937.18;
Oklahoma: OKLA.STAT.ANN. tit.22 §§270-275;
Oregon: ORE.REV.STAT. §§136.608 to 136.614;
Pennsylvania: Pa.R.Crim.P. 522;
Rhode Island: R.I.Super.Ct. R.Crim.P.46, R.I.D.Ct. R.Crim.P. 46;
South Carolina: S.C. CODE ANN. §17-7-230, 17-7-650, 17-5-140;
South Dakota: S.D.COD.LAWS ANN. §23A-43-18;
Tennessee: TENN.CODE ANN. §§38-5-114; 40-10-107 to 40-10-112;
Texas: TEX.CODE OF CRIM.PRO.ANN. arts. 24.14, 24.15, 24.23 - 24.27;
Utah: UTAH R.CRIM.P. R.7, UTAH R.JUV.P. 59;
Vermont: VT.STAT.ANN. §§6605, 7551, 7554;
Virginia: VA. CODE ANN. §19.2-127;
Washington: Wash.Super.Ct.Crim.R. 4.10;
West Virginia: W.VA.CODE ANN. §§62-1C-15, 62-6-4;
Wisconsin: WIS.STAT.ANN. §969.01;
Wyoming: WYO.STAT. §5-6-206.

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[65] In addition, forty-nine states have adopted the Uniform Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings in one form or another. 11 U.L.A. 1 (2004 Supp.).

REPORT AND RECOMMENDATIONS RELATING TO MATERIAL WITNESSES

NEW JERSEY LAW REVISION COMMISSION
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INTRODUCTION

The New Jersey material witness statute authorizes a judge to detain a person believed to be a material witness to a crime.[1] The statute, enacted in 1898, is not written in plain English and does not address the problems posed by the arrest and confinement of material witnesses who are often innocent witnesses to crimes. The material witness statute implicates the right of citizens to remain free from unreasonable arrest, and the state's need to prosecute crime. The present material witness statute does not protect either the citizen's or the state's interest as the decision in State v. Misik discussed below makes clear. The right of innocent citizens to remain free, as well as the need to prosecute crime, are serious matters requiring fair and well-balanced legislation. The New Jersey Law Revision Commission recommends the repeal of the present material witness statute and the adoption of its proposed statute.

In State v. Misik, 238 N.J. Super. 367 (Law Div. 1989), the court found that a warrant issued under the material witness statute violated the Fourth and Fourteenth Amendments of the United States Constitution, and article 1, paragraph 1 of the New Jersey Constitution, because the statute failed to require a pre-deprivation hearing and to prescribe other procedural safeguards to enforce due process requirements.[2] The court prescribed guidelines to implement the statute consistent with the federal and New Jersey constitutions. The court recommended that the Supreme Court promulgate rules or that "the legislature enact additional statutory provisions in order to carry out the mandate of the Due Process Clause of both the federal and state constitutions." Id. at 385.

The Supreme Court Committee on Criminal Practice is considering the issue, but has not yet recommended a rule.[3] Because the guidelines that would make the material witness statute meet constitutional concerns raise issues of substantive law, the legislature, not the Supreme Court, is the proper forum to establish the guidelines. The rule-making power of the Supreme Court is limited to procedural issues. N. J. Const. art. IV, " II, Ã 3. Even if the court rule deals with some matters of substance, it cannot treat

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1 The term "material witness statute" refers to N.J.S. 2A:162-2, N.J.S. 2A:162-3 and N.J.S. 2A:162-4. The key provision, N.J.S. 2A:162-2, provides: "Every judge and magistrate shall, when in his judgment the ends of justice so require, bind by recognizance with sufficient surety, any person who shall declare against another person for any crime punishable by death or imprisonment in state prison, or any person who can give testimony against any person so accused of any such crime, whether the offender be arrested, imprisoned, bailed or not." N.J.S. 2A:162-3 mainly concerns the conditions of confinement; N.J.S. 2A:162-4 requires the county to pay the witness a fee of $3 per day of confinement.

2 The fourth amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

The fourteenth amendment provides in pertinent part that "nor shall any State deprive any person of life, liberty, or property, without due process of law ...." U.S. Const. amend. XIV.

Article 1, paragraph 1 of the New Jersey Constitution provides: "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N. J. Const. art. 1, Ã 1.

3 The existing court rule, R. 3:26-3, merely reiterates the broad language of N.J.S. 2A:162-2.

the range of substantive issues or employ the range of remedies available to legislation. Moreover, to rely on the Supreme Court Committee on Criminal Practice to amend the existing court rule on material witnesses to rectify the constitutional defects of a statute is an abdication of legislative responsibility.

The Commission identified several procedural and substantive problems in the material witness statute: N.J.S. 2A:162-2 through N.J.S. 2A:162-4. First, N.J.S. 2A:162-2 does not specify whether a criminal action must be pending before the state may apply for a warrant to arrest a person alleged to be a material witness. The failure of the statute to specify the preconditions for a warrant have engendered uncertainty as to when the statute is applicable. Second, the statute does not contain procedural safeguards to make certain that the arrest and detention of the witness comply with federal and state constitutional due process requirements. Third, while 2A:162-3 forbids lodging the material witness in an ordinary jail, it does not require the court to impose the least restrictive constraint to detain the witness. Fourth, 2A:162-4 sets the payment of an unreasonably low fee of $3 per day for detained witnesses. The material witness statutes do not deal with other issues such as warrantless arrests, finality of the order for purposes of appeal and the effects of taking the witness's deposition.

The Commission examined the material witness statutes of other states, the case law in New Jersey and the scholarly literature. None of the foreign material witness statutes addressed all important issues. The Commission thus drafted a comprehensive statute to regulate judicial orders directing the appearance or detention of a material witness. The proposed statute has three objectives: (1) to strike a balance between the need of the law enforcement community to prosecute crime and the right of the citizen not charged with a crime to remain free from arrest, (2) to resolve the inconsistencies in the common law, and (3) to establish the payment of a reasonable fee for confined witnesses and create other procedural rules to effectuate the interests of the law enforcement community and material witnesses.

The statute affords both the state and the defendant the right to apply for material witness orders if three threshold requirements are met: (1) an indictment, accusation or complaint for a crime is pending, or a criminal investigation before a grand jury is pending (2) the alleged witness has information material to the pending criminal action and (3) the alleged witness is unlikely to respond to a subpoena. The proposed statute specifies the content of the application for a material witness order, and lists the rights that must be afforded to a witness during a material witness hearing. In addition, the proposed statute establishes standards of review for the issuance of material witness orders, and sets the conditions of release and of confinement. The statute permits police officers to arrest an alleged material witness without a warrant in emergencies, but requires them to bring the witness before a judge immediately after arrest. Finally, the proposed statute increases to $40 per day the fee paid to detained witnesses, and gives material witnesses additional rights such as the right to appeal and to modify the material witness order.

Background

a. Material witness: definition and foreign law.

A material witness is "a witness whose testimony is crucial to either the defense or prosecution." Black's Law Dictionary 826 (5th ed. abridged 1983). "In most states, he may be required to furnish bond for his appearance and, for want of surety he may be confined until he testifies." Id. A material witness often is an innocent observer of a crime who happens to be in the wrong place at the wrong time. For example, a tourist [illegible]m California who witnesses a crime in Newark by chance and gives a report to the [illegible] is a potential material witness in New Jersey. One court has observed that a [illegible]ial witness is "an innocent citizen whose right to the full enjoyment of liberty is threatened solely because of his potential usefulness as a witness for the government ... the deprivation of liberty, although temporary by definition, can be measured in weeks or even months." Application of Cochran, 434 F. Supp. 1207, 1213 (D. Neb. 1977).

Material witness statutes authorize the arrest and detention of alleged material witnesses. Carlson, Jailing the Innocent: The Plight of the Material Witness, 55 Iowa L. Rev. 1 (1969). "Nearly all states and the federal government have enacted provisions dealing with pretrial confinement of material witnesses." Carlson and Voelpel, Material Witness and Material Injustice, 58 Wash. U. L. Q. 1, 21 (1980). Witness laws are justified under the concept that every citizen has a duty to testify. Hurtado v. United States, 410 U.S. 578, 589 (1973). Most material witness statutes are old. For example, the New Jersey material witness statutes derive from 1898. "[W]hen dusted off and put into operation, these archaic statutes result in innocent citizens spending weeks -- even months -- in custody." Carlson and Voelpel, Material Witness and Material Injustice, 58 Wash. L. Q. 1 (1980).

Several states have developed modern legislation in the area of material witness detention. E.g. Ariz. Rev. Stat. Ann. sec. 13-4083(b) (1989) (deposition of detained witness requires discharge); Hawaii Rev. Stat. sec 835-2 (1988) (detention system based on material witness order); and N.Y. Crim. Pro. Law sec. 620.20 (McKinney 1984) (detention system based on material witness order). However, notwithstanding this legislative activity, most state statutes contain little or no procedural or substantive protection for detained witnesses. Carlson and Voelpel, supra at 27. None of the newer state statutes address the constitutional concerns raised in State v. Misik, or resolve the procedural and substantive problems identified by the Commission. Thus none of the material witness laws of foreign states provides a model to follow.

The federal material witness law also does not constitute a model law. The federal law is not a single comprehensive statute. Rather, the federal material witness law consists of a matrix of statutes and rules. 18 U.S.C. 3144 (1989)(release or detention of a material witness); 18 U.S.C. 3142 (1989)(release or detention of a defendant pending trial); 28 U.S.C. 1821 (1989)(witness fees); 18 U.S.C. 3006(a) (1989) (assignment of counsel rule); Fed. R. Crim. P. 46 (release from custody); and Fed. R. Crim. P. 15 (deposition of detained witness). In addition to being unduly complicated, the federal statutes and rules fail to authorize the arrest of material witnesses. The

judiciary had to infer the power to arrest from the federal material witness statute. Bacon v. United States, 449 F. 2d 933, 937 (9th Cir. 1971).

b. New Jersey law and State v. Misik

In Misik, a Superior Court judge issued a warrant for the arrest of Janos Misik as a material witness pursuant to N.J.S. 2A:162-2 based on the ex parte application of a detective of the New Jersey State Police. State v. Misik, 238 N. J. Super. at 371. The application alleged that Misik had information concerning the commission of environmental crimes and that his arrest was necessary because he would not be available for service by subpoena. Id.

The affidavit in support of the application contained the following allegations: (1) Misik had knowledge that his employer, Petro King Terminal Corporation, released petroleum products into the Hackensack River, (2) Misik, though initially cooperative with the police, had missed an appointment, (3) Misik was a foreigner suspected of being an illegal alien because he once failed to produce his "green card" to the police, (4) Misik lived on a boat displaying a "for sale" sign, (5) Misik did not give the police the exact location of his boat in the marina and (6) Misik had a criminal record for drug offenses. State v. Misik, 238 N. J. Super. at 371. No criminal action or proceeding against Petro King Terminal Corporation was pending when the State applied for the arrest warrant.

The court held an in camera discussion with an assistant prosecutor concerning the State's authority to obtain an ex parte arrest warrant of Misik. The assistant prosecutor maintained that the State had authority to arrest Misik without a warrant. State v. Hand, 101 N. J. Super. 43, 55-56 (Law Div. 1968) holds that a peace officer may arrest without a warrant when he has a reasonable basis or probable cause to believe a person is a material witness. The court then issued the warrant which authorized the police to arrest Misik. The warrant required the police to bring Misik before the court immediately after his arrest so that the court could inform Misik of his rights and the nature of the proceedings.

The police arrested Misik the day the arrest warrant was issued and, contrary to the court's order, brought Misik to the prosecutor's office, not the court. State v. Misik, 238 N. J. Super. at 372. The police subjected Misik to a lengthy custodial interrogation and detained him overnight in jail where he was treated like a prisoner contrary to N.J.S. 2A:162-3. The next morning Misik was brought to court handcuffed and in prison garb. State v. Misik, 238 N. J. Super. at 372. Misik's attorney objected to the procedures adopted by the court to issue the arrest warrant and requested leave to file a brief challenging the constitutionality of the material witness statutes. The court released Misik on his own recognizance, subject to the condition that he report weekly to the prosecutor's office for one month. Id. The court informed the prosecutor that if the State did not convene a grand jury investigation of Petro King Terminal Corporation within one month, the court would vacate the reporting requirement. Id. The court further

granted leave to Misik's attorney to file a brief challenging the constitutionality of the material witness statute. Id. at 373.

At the hearing, the court held that the federal and New Jersey constitutions require that an alleged material witness be provided with notice and an opportunity to be heard before being detained under the New Jersey material witness statute. State v. Misik, 238 N. J. Super. at 388. The court also held that a criminal action must be pending against an accused before a person may be apprehended or detained as an alleged material witness. Id. In support of its holding, the court found that the "express language of the statute compels the conclusion that a criminal action must be pending against an accused before a court may sanction the detention of a person believed to be a material witness." Id. at 375. The court also noted that "it is well-established that our Rules do not give a prosecutor any pre-trial subpoena power independent of the grand jury." Id. at 376. Consequently, Misik was free to refuse to cooperate with the police. Because the prosecutor could not compel Misik's appearance by subpoena absent a grand jury investigation, the court found that the prosecutor had misused the material witness statute to detain and arrest Misik. Id. at 377.

The court also found that Misik was deprived of his constitutional rights under both the federal and New Jersey constitutions. The judge stated that "Misik was arrested without prior notice and an opportunity to be heard before he was arrested and committed to jail", and thus found that the arrest and detention violated the due process requirements of the Fourteenth Amendment of the United States Constitution and article 1, paragraph 1 of the New Jersey Constitution. State v. Misik, 238 N. J. Super. at 377. The court also stated that "it was patently unreasonable under the Fourth Amendment of the United States Constitution to have arrested and detained Misik because of his refusal to cooperate with the police." Id. While the court found that the procedures followed to arrest Misik violated the federal and New Jersey constitutions, the court did not hold that the New Jersey material witness statute (N.J.S. 2A:162-2) was unconstitutional. Id. at 384.

Because the statute is silent as to constitutional safeguards, the court looked to federal and foreign state legislation for guidance. E.g. 18 U.S.C. " 3142 (e) and (f) and " 3144 (detention subject to clear and convincing evidence standard); N.Y. Crim. Pro. Law. " 620.30 (McKinney 1984) (order directs alleged material witness to appear at pre-deprivation hearing); Neb. Rev. Stat. " 29-507 (1989) (specifies the conditions of release for material witnesses). The court, deciding the New Jersey statute could be rehabilitated if procedural safeguards were established, then set forth a list of guidelines to fill the gap. State v. Misik, 238 N. J. Super. at 385-86.

Most important, the court held that a person could not be arrested or detained as a material witness unless the justification for the arrest or detention was based on probable cause. The judge stated, "This court believes that at the very least a heavy burden of proof should be imposed upon the State whenever it decides it is necessary to seek detention of an innocent person, not even a suspect, much less an accused." Id. at 383. The court cited Addington v. Texas, 441 U.S. 418 (1979) in support of its position. In

Addington, the United States Supreme Court established the "clear and convincing" standard of proof to commit a person for mental care on an involuntary basis. The United States Supreme Court stated, "The function of a standard of proof, as that concept is embodied in the Due Process and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." Addington v. Texas, 441 U.S. at 423 (citation omitted). The court in Misik found that the interests at stake in material witness proceedings are the liberty interests of an innocent citizen and the State's need to gather evidence of crimes. The clear and convincing standard allocates the risk of error to the state and thus minimizes the risk of erroneous decisions. It also "reflects the value society places on individual liberty." Id. at 426 [quoting Tippett v. Maryland, 436 F. 2d 1153, 1166 (4th Cir. 1971)]. The court in Misik thus held that the "clear and convincing" standard is constitutionally compelled for the arrest and detention of material witnesses.

Prior to Misik, the two principal decisions on New Jersey material witness law were State v. Price, 108 N. J. Super. 272 (Law Div. 1970) and State v. Hand, 101 N. J. Super. 43 (Law Div. 1968). When read together, Price, Hand and Misik do not constitute a coherent statement of law on material witnesses, and therefore do not provide clear guidelines to the court, prosecutor or defendant. The inconsistencies concern primarily the right of the police to arrest a material witness without a warrant, and the necessity of a pending criminal action to detain a material witness.

For example, the court in Price indicated that the police may not hold a potential witness unless there is a pending criminal action against an accused. State v. Price, 108 N. J. Super. at 280-281. To the contrary, the court in Hand sanctions the detention of a person believed to be a material witness despite the absence of any formal charges against an accused. State v. Hand, 101 N. J. Super. at 56. The court in Misik held that a pending criminal action is necessary to obtain a material witness order. State v. Misik, 238 N. J. Super. at 385. In addition, the court in Hand authorizes the warrantless arrest of potential material witnesses. State v. Hand, 101 N. J. Super. at 56. The court in Misik prohibits the warrantless arrest of potential material witnesses. State v. Misik, 238 N. J. Super. at 388. The court in Misik stated that "under no circumstances may a person be arrested or detained without court process ...." Id. The decisions in Misik and Hand thus directly contradict one another on this issue. Because Price, Hand and Misik are law division opinions, each decision has equivalent legal weight and thus the inconsistencies generated by them unsettle the law on material witnesses.

PROPOSED STATUTE

2C:104-1. Definitions

a. A material witness is a person who has information material to the prosecution or defense of a crime.

b. A material witness order is a court order fixing conditions necessary to secure the appearance of a person who is unlikely to respond to a subpoena and who has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime, or a criminal investigation before a grand jury.

Source: New

COMMENT

This section defines a material witness and a material witness order. A material witness is a person who has information crucial to the prosecution or defense. A material witness order is a court order finding that a person is a material witness, and commanding the person to appear before the court. A material witness order may not issue unless the court finds that: (1) a person is a material witness, (2) the person is unlikely to respond to a subpoena and (3) there is a pending indictment, accusation or complaint for a crime, or a criminal investigation before a grand jury. The material witness statute therefore does not apply to offenses that are not crimes. See, N.J.S. 2C:1-4(a) and 1-14(k). The inclusion of definitions cures the defect noted by State v. Misik that the former statute did not define a material witness or material witness order. State v. Misik, 238 N. J. Super. 367, 374 (Law Div. 1989)

2C:104-2. Application for material witness order

a. The Attorney General, county prosecutor or defendant in a criminal action may apply to a judge of the Superior Court for an order compelling a person to appear at a material witness hearing, if there is probable cause to believe that (1) the person has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime, or a criminal investigation before a grand jury, and (2) the person is unlikely to respond to a subpoena. The application may be accompanied by an application for an arrest warrant when there is probable cause to believe that the person will not appear at the material witness hearing unless arrested.

b. The application shall include a copy of any pending indictment, complaint or accusation and an affidavit containing: (1) the name and address of the person alleged to be a material witness, (2) a summary of the facts believed to be known by the alleged material witness and their relevance to the pending criminal action or investigation, (3) a summary of the facts supporting the belief that the person possesses information material to the pending criminal action or investigation, and (4) a summary of the facts supporting the claim that the alleged material witness is unlikely to respond to a subpoena.

c. If the application requests an arrest warrant, the affidavit shall set forth why immediate arrest is necessary.

Source: 2A:162-2

COMMENT

Subsection (a) substantially changes the source section, which merely established the power to bind material witnesses. Subsection (a) allows the Attorney General, county prosecutor or defendant to apply to the Superior Court for a material witness order. The present statute does not give defendants the right to apply for material witness orders. Subsection (a) gives defendants the right to secure the testimony of witnesses to balance the powers of the State and defendants in criminal proceedings. The federal statute and the laws of several foreign jurisdictions provide defendants the right to obtain material witness orders. 18 U.S.C. 3144 (1989); Hawaii Rev. Stat. sec. 835-2(a)(1988); N.Y. Crim Pro. Law sec. 620.20 (1) (McKinney 1984); and N.C. Gen. Stat. sec. 15A-803(a)(1990).

The Superior Court may issue a material witness order when there is probable cause to believe that: (1) there is a pending indictment, accusation, or complaint for a crime, or a criminal investigation before a grand jury, (2) a person possesses information material to the pending criminal action and (3) the person is unlikely to respond to a subpoena. These requirements derive from the guidelines prescribed by State v. Misik, 238 N. J. Super. at 385-386.

However, the requirements of this subsection differ in one important respect from the Misik guidelines. Misik limits applications for material witness orders to situations where a complaint, indictment or accusation is pending. Subsection (a), in addition, allows applications where a grand jury is conducting an investigation. The addition recognizes that a witness's testimony may be necessary to determine the identity of the person to be indicted. To the extent that the present statute may not allow the use of material witness orders in aid of grand jury investigations this section represents a change in the law. See, State v. Price, 108 N. J. Super. 272, 280-281 (Law Div. 1970).

Subsection (b) requires the party making an application for a material witness order to provide facts to the court establishing the need for the material witness order. The affidavit must contain a summary of the facts believed to be known by the alleged material witness and their relevance to the pending investigation. The affidavit also must contain a summary of facts showing that the person is unlikely to respond to a subpoena, and a summary of facts supporting the affiant's belief that the person is a material witness. The requirements of subsection (b) are intended to provide a court with information needed to make an independent judgment on the application. Mere conclusory allegations do not satisfy these requirements. When applicable, subsection (b) requires the application to include a copy of the pending indictment, accusation or complaint.

Subsection (c) governs the special situation where the applicant seeks the arrest of the alleged material witness. In this event, the application must establish that, without the arrest, the material witness will not be available as a witness.

2C:104-3. Order to appear

a. If there is probable cause to believe that a material witness order may issue against the person named in the application, the judge may order the person to appear at a hearing to determine whether the person should be adjudged a material witness.

b. The order and a copy of the application shall be served personally upon the alleged material witness at least 48 hours before the hearing, unless the judge adjusts the time period for good cause, and shall advise the person of: (1) the time and place of the hearing and (2) the right to be represented by an attorney and to have an attorney appointed if the person cannot afford one.

Source: New

COMMENT

Subsection (a) identifies the standard of review governing an application for a material witness order. The standard of review is the probable cause standard. To issue a material witness order, the judge must find that it is more probable than not that the facts set forth in the application are true.

Subsection (b) requires the party who obtains a material witness order to serve a copy of the order and application upon the person named in the application. Service must take place at least 48 hours before the hearing unless the judge enlarges or contracts the prescribed time period. The judge may alter the prescribed time period if the party making the application for a material witness order demonstrates that exigent circumstances justify a deviation from the prescribed time period. The order to appear informs the alleged material witness of the time and place of the hearing and of the right to counsel.

2C:104-4. Arrest With Warrant

a. If there is clear and convincing evidence that the person named in the application will not be available as a witness unless immediately arrested, the judge may issue an arrest warrant. The arrest warrant shall require that the person be brought before the court immediately after arrest. If the arrest does not take place during regular court hours, the person shall be brought to the emergency-duty Superior Court judge.

b. The judge shall inform the person of: (1) the reason for arrest, (2) the time and place of the hearing to determine whether the person is a material witness, and (3) the right to an attorney and to have an attorney appointed if the person cannot afford one.

c. The judge shall set conditions for release, or if there is clear and convincing evidence that the person will not be available as a witness unless confined, the judge may order the person confined until the material witness hearing which shall take place within 48 hours of the arrest.

Source: 2A:162-2

COMMENT

Subsection (a) establishes the standard of review that the judge applies to an application for an arrest warrant. The standard of review is the "clear and convincing" evidence standard. State v. Misik, 238 N. J. Super. at 386. The "clear and convincing" standard is the intermediate standard of proof located between the preponderance of the evidence and reasonable doubt standards. Addington v. Texas, 441 U.S. 418, 423 (1979). While it is difficult to define the term "clear and convincing" evidence precisely, it denotes a rigorous level of proof. The "clear and convincing" standard of proof minimizes the risk of erroneous decisions and reflects the value society places on individual liberty. Id. at 425 [quoting Tippett v. Maryland, 436 F. 2d 1153, 1166 (4th Cir. 1971)].

Subsection (a) also directs that the person be brought before the court immediately after arrest. If the arrest takes place outside of regular court hours, the person must be brought before the emergency-duty Superior Court judge. The purpose of this requirement is to make certain that the arrested person has an immediate judicial review of the arrest. The statute does not specify a penalty for noncompliance with the requirement to bring the arrested person before the court immediately after arrest, since a violation of a court order is a contempt of court.

Subsection (b) requires the judge at this first appearance to inform the arrested person of the time and place of the material witness hearing and the right to counsel.

Subsection (c) requires the judge to release the arrested person with appropriate conditions unless confinement is the only method to secure the appearance of the witness. When the judge orders the person confined, the judge must hold the material witness hearing within 48 hours of the person's arrest.

2C:104-5. Arrest Without Warrant

a. A law enforcement officer may arrest an alleged material witness without a warrant only if the arrest occurs prior to the filing of an indictment, accusation or complaint for a crime, or the initiation of a criminal investigation before a grand jury, and if the officer has probable cause to believe that:

(1) a crime has been committed,

(2) the alleged material witness has information material to the prosecution of that crime,

(3) the alleged material witness will refuse to cooperate with the officer in the investigation of that crime, and

(4) the delay necessary to obtain an arrest warrant or order to appear would result in the unavailability of the alleged material witness.

b. Following the warrantless arrest of an alleged material witness, the law enforcement officer shall bring the person immediately before a judge. If court is not in session, the officer shall immediately bring the person before the emergency-duty Superior Court judge. The judge shall determine whether there is probable cause to believe that the person is a material witness of a crime and, if an indictment, accusation or complaint for that crime has not issued or if a grand jury has not commenced a criminal investigation of that crime, the judge shall determine whether there is probable cause to believe that, within 48 hours of the arrest, an indictment, accusation or complaint will issue or a grand jury investigation will commence. The judge then shall proceed as if an application for a warrant has been made under 2C:104-4.

COMMENT

This subsection settles the law regarding the right to arrest material witnesses without a warrant. Compare State v. Hand, 101 N. J. Super. at 56 (allowing warrantless arrests) with State v. Misik, 238 N. J. Super. at 388 (forbidding warrantless arrests). Subsection (a) allows the warrantless arrest of alleged material witnesses under precisely defined circumstances. The warrantless arrest power applies in exigent circumstances such as the encounter between a law enforcement officer and a witness at the scene of a crime. As a result, the power to arrest without a warrant ceases to exist subsequent to the filing of an indictment, accusation or complaint for a crime or the initiation of a criminal investigation before a grand jury.

Subsection (b) follows the procedure set forth in 2C:104-4 regarding arrests upon warrant. The law enforcement officer must bring the arrested person before a judge immmediately after arrest so that the judge may review the propriety of the arrest and set appropriate conditions of release. The failure of the law enforcement officer to comply with the requirement to bring the arrested person before a judge immediately after arrest makes the arrest unlawful thereby providing the wrongfully arrested person with remedies for an unlawful arrest.

2C:104-6. Material witness hearing

a. At the material witness hearing, the following rights shall be afforded to the person: (1) the right to be represented by an attorney and to have an attorney appointed if the person cannot afford one, (2) the right to be heard and to present witnesses and evidence, (3) the right to have all of the evidence considered by the court in support of the application, and (4) the right to confront and cross-examine witnesses.

b. If the judge finds that there is probable cause to believe that the person is unlikely to respond to a subpoena and has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime, or a criminal investigation before a grand jury, the judge shall determine that the person is a material witness and may set the conditions of release of the material witness.

c. If the judge finds by clear and convincing evidence that confinement is the only method that will secure the appearance of the material witness, the judge may order the confinement of the material witness.

d. The judge shall set forth the facts and reasons in support of the material witness order on the record.

Source: 2A:162-2

COMMENT

Subsection (a) establishes the rights afforded to the alleged material witness at the hearing. The alleged material witness has the full panoply of rights afforded to a person at an adversarial hearing. Among the rights granted is the right to know the evidence used by the court as the basis for grant of the application. If disclosure of particular evidence would obstruct the ongoing criminal investigation, the court may exclude that evidence from consideration in deciding whether to grant the application. Cf. State v. Kunz, 55 N. J. 128 (1969) and R. 3:21-2(a).

Subsections (b) and (c) distinguish conceptually between the finding that a person is a material witness and the decision to impose restraints to assure the appearance of the witness. Subsection (b) identifies the standard of review for determining that a person is a material witness and to impose non-custodial restraints on the witness. The standard of review is the probable cause standard. Subsection (c) identifies the standard of review for ordering the confinement of the witness. The judge may order the confinement of the material witness only when the judge finds by clear and convincing evidence that no other form of restraint will assure the appearance of the material witness. The clear and convincing standard is used to indicate that confinement is a last resort. The clear and convincing standard protects the constitutional right of the person to be free from arbitrary seizure. State v. Misik, 238 N. J. Super. at 387.

Subsection (d) requires that the judge set forth facts and reasons in support of the order. The requirement to set forth facts and reasons furnishes a record for appeal.

2C:104-7. Conditions of release; confinement

a. A confined person shall not be held in jail or prison, but shall be lodged in comfortable quarters and served ordinary food.

b. The conditions of release for a material witness or for a person held on an application for a material witness order shall be the least restrictive to effectuate the appearance of the material witness. A judge may: (1) place the witness in the

custody of a designated person or organization agreeing to supervise the person, (2) restrict the travel of the person, (3) require the person to report (4) set bail or (5) impose other reasonable restrictions on the material witness.

c. A person confined shall be paid $40 per day, and when the interests of justice require it, the judge may order additional payment not exceeding the actual financial loss resulting from the confinement. The party obtaining the material witness order bears the cost of confinement and payment unless the party is indigent.

Source: 2A:162-3, 2A:162-4

COMMENT

Subsection (a) identifies the conditions of detention, and is substantially identical to the requirements of N.J.S. 2A:162-3. A material witness, if confined, cannot be treated like a prisoner because the material witness has not comitted a crime. Rather, the state or defendant must provide comfortable lodging and ordinary food to a confined material witness.

Subsection (b) requires the judge to impose the least restrictive restraint upon a non-confined material witness to secure the appearance of the material witness. The list of alternatives is designed to guide the judge in the decision making process, but is not meant to exhaust the range of possible and appropriate alternatives. Subsection (b) permits the judge to exercise discretion in setting the appropriate restraints.

Subsection (c) substantially departs from present law which provides for payment of $3 for each day the person is "committed or detained in jail." N.J.S. 2A:162-4. Subsection (c) requires the payment of $40 for each day the material witness is confined. The amount of payment is the same as that provided by federal law. 28 U.S.C.A. ° 1821(b). In addition, this subsection allows a court to order additional payment not to exceed actual financial losses, if the additional payment would serve the interests of justice.

N.J.S. 2A:164-2 required the board of chosen freeholders of the county where the confinement occurs to pay the costs of confinement regardless of the entity seeking the confinement. Subsection (c) reflects the fact that the county is not always responsible for the costs of prosecution when the prosecution is brought by the State. Cf. 2A:73A-9. The effect of subsection (c) is that the prosecution, whether county or State, bears the cost of a material witness confined on its behalf. Likewise, a defendant obtaining the material witness order requiring confinement is obligated to pay the cost of confinement, plus additional payment if ordered, unless the party is indigent.

2C:104-8. Deposition

A material witness may apply to the Superior Court for an order directing that a deposition be taken to preserve the witness's testimony. After the deposition is taken, the judge shall vacate the terms of confinement contained in the material witness order and impose the least restrictive conditions to secure the appearance of the material witness.

Source: New

COMMENT

This section gives a material witness a statutory right to apply to the Superior Court for an order requiring the taking of a deposition persuant to court rules to preserve the testimony of the witness. Deposition as an alternative to continued confinement is now allowed by court rule. R. 3:13-2. The

federal rules and other state laws take a similar approach. E.g. Fed. R. Crim. P. 15; Ariz. Rev. Stat. Ann. ° 13-4083(b) (1989). The taking of a deposition to preserve testimony vacates the confinement terms of the material witness order and requires the judge to modify the material witness order to assure that the least restrictive conditions of release remain imposed on the material witness.

2C:104-9. Orders appealable

A material witness order shall constitute a final order for purposes of appeal, but, on motion of the material witness, may be reconsidered at any time by the court which entered the order.

Source: New

COMMENT

This section makes a material witness order a final order for purposes of appeal entitling the material witness to file an appeal without leave of the Appellate Division. In the absence of the statute it would be unclear whether a material witness order is interlocutory or final. The Superior Court which entered the order retains jurisdiction when an appeal is taken to enable the witness to apply to the court for a modification of the original order.

TABLE OF DISPOSITIONS

SECTION	DISPOSITION
2A:162-2	2C:104-2, 4 and 6
2A:162-3	2C:104-7
2A:162-4	2C:104-7

Municipality of Anchorage

[illegible] Street • Anchorage, Alaska [illegible] • Telephone [illegible] • [illegible]

Mayor Mark Begich

Anchorage Police Department

March 17, 2006

This is a letter of support for SB 206, the Material Witness Bill.

Anchorage and the entire State are growing; and with this gr[illegible] bring both new and more complex issues in to our communities. The challenge for law enforcement is to keep up with the changes in societal trends that negatively impact public safety and to balance our response to them within the mandates of the law. Sometimes to meet this challenge requires change in our tactics and/or our law. In considering such changes, most of us first look to other jurisdictions to examine how they had responded and if had been effective. And the fact that nearly every state and the federal government have addressed this issue in the adoption of a material witness law is significant and indicative that this law is essential to combat this societal problem.

I support this bill and appreciate your collective efforts to help all Alaskans be a little safer in our changing world.

Sincerely:

Walt Monegan
Chief of Police

WM/vb

Community, Security, Prosperity

FAIRBANKS POLICE DEPARTMENT

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Senator Ralph Seekins
119 N. Cushman Street
Fairbanks, AK 99701

March 14, 2006

Dear Senator Seekins:

I am writing to voice my strongest support for **HB 206**, a measure introduced by Senator Con Bunde, which would allow police officers to briefly detain and identify material witnesses in homicide cases.

I am appreciative of the concerns that may arise from this bill- most notably from those who are concerned with an erosion of civil liberties, and are hesitant to grant "additional powers" to the police. I believe that these concerns are effectively addressed by the revised language of this bill, whose *very narrow focus* dictates that such brief detentions and identification efforts shall only be employed in the immediate aftermath of a homicide.

One only needs to look at the escalating gang-violence and homicide rate in Anchorage to know that this is a very *real problem* which needs to be addressed in a common-sense fashion. As one whom I view to be a long-time supporter of law-enforcement in Alaska, I'm hopeful that you will lend your support to the passage of HB 206.

Sincerely,

Daniel P. Hoffman, Chief
Fairbanks Police Department